

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement (hereinafter referred to as "Agreement"), by and between the CITY OF UPLAND, a municipal corporation (hereinafter referred to as "CITY"), and STEPHEN DUNN (hereinafter referred to as "MANAGER"), provides as follows:

I. Recitals.

1. The City Council of the City of Upland (hereinafter referred to as "CITY COUNCIL") desires to retain the services of Stephen Dunn as City Manager, as that office is created in the Upland Municipal Code (Chapter 2.04) and to also, as an integral component thereof, retain his services as Executive Director of the UPLAND COMMUNITY REDEVELOPMENT AGENCY (hereinafter referred to as "AGENCY") and other affiliated agencies and offices of the CITY.

2. It is the desire of the CITY COUNCIL to define the compensation and benefits, establish certain conditions of employment, and set certain working conditions of MANAGER.

3. The CITY COUNCIL desires as follows: (a) to retain the services of MANAGER and to provide inducement for MANAGER to remain in such employment; (b) to make possible full work productivity by assuring MANAGER's morale and peace of mind with respect to future security; and (c) to provide equitable means for MANAGER's separation from employment should CITY or MANAGER desire to terminate MANAGER's employment.

4. CITY hereby offers and MANAGER hereby accepts employment as City Manager, AGENCY Executive Director, and related positions for CITY upon the terms and conditions set forth hereunder and as set forth in the Upland Municipal Code and the general laws of the State of California.

II. Agreement.

NOW, THEREFORE, in consideration of mutual promises, covenants and conditions herein contained, including the Recitals above, the CITY COUNCIL and MANAGER (hereinafter referred to as "parties") agree as follows:

1. Duties.

CITY hereby agrees to retain the services of MANAGER as City Manager of the City of Upland to perform, on a first-class basis, the functions and duties specified in Chapter 2.04 of the Upland Municipal Code, as the same may be amended from time to time, and any successor provision(s) thereto, and to perform other legally permissible and proper duties and functions consistent with the Office of City Manager, as the CITY COUNCIL shall from time to time assign, including, but not limited to, the duties of AGENCY Executive Director. The provisions of Part I, Recitals of this Agreement are hereby incorporated by reference herein.

2. Term.

A. The term of this Agreement shall commence on June 6, 2011 (hereinafter referred to as "Commencement Date") and shall continue for a one (1) year term from this date, which term shall automatically, without further action by either party, renew and extend from each annual anniversary following the Commencement Date for a new one (1) year term, unless sooner terminated in the manner and on the terms provided herein or unless, at least ninety (90) days before the annual anniversary, CITY or MANAGER provides the other party with written notice that no automatic renewal will occur.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of MANAGER to resign at any time from his position with the CITY during the term of this Agreement by giving notice and otherwise complying with the conditions set forth in this Agreement.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of CITY COUNCIL to terminate the services of MANAGER at any time, at the sole discretion of CITY COUNCIL, in accordance with the Upland Municipal Code, as the same may be amended from time to time, and in accord with the provisions contained herein.

3. Termination and Severance Pay.

A. ***Without Cause:*** The CITY COUNCIL may terminate the services of MANAGER at any time without cause upon an affirmative vote to terminate made by three (3) members of the CITY COUNCIL at a meeting of the CITY COUNCIL and subject to thirty (30) days notice to MANAGER of the effective date of the termination. Upon such termination, CITY COUNCIL shall promptly pay to MANAGER Severance Pay. Such Severance Pay shall consist ninety (90) days of salary at the then existing base salary rate.

1. CITY COUNCIL's request of MANAGER to resign without cause shall be cause to pay to MANAGER Severance Pay pursuant to Section 3.A. of this Agreement.

2. In the event the Upland Municipal Code is amended by CITY COUNCIL action, where such action eliminates, or significantly alters the City Manager form of government, MANAGER shall be entitled to Severance Pay as defined herein.

3. CITY COUNCIL may terminate the services of MANAGER without cause and with prior notice per Section 3.A. or in the alternate, CITY COUNCIL may choose to compensate the MANAGER with the Severance Pay together with thirty (30) days of salary and benefits and by doing so require the immediate cessation of MANAGER's employment.

B. ***With Cause:*** In the event MANAGER is terminated for cause by CITY COUNCIL during the effective period of this Agreement, MANAGER shall not be entitled to any Severance Pay or other payment except for then due wages. "Cause," for the purpose of this Agreement, shall mean the failure to immediately report to the CITY COUNCIL any contact of the MANAGER by law enforcement as regards any action of the MANAGER, whether related to MANAGER's employment by CITY or not, conduct that is, in the CITY COUNCIL's sole

discretion, unprofessional or likely to reflect negatively on the City of Upland; the conviction of a felony or crime involving moral turpitude as defined by relevant case law, substantially related to the functions and duties of MANAGER or the intentional violation or failure to act upon any or all oral, written or publically adopted CITY COUNCIL direction, resolution, or ordinance except for unlawful acts.

C. Voluntary Resignation: CITY COUNCIL agrees that MANAGER may, at any time during the term hereof, upon ninety (90) days' written notice to CITY COUNCIL, resign his position as City Manager. In that event, MANAGER shall not be entitled to Severance Pay. CITY COUNCIL may elect to relieve MANAGER of his responsibilities at any time prior to the expiration of the ninety (90) day notice period by paying to MANAGER salary and benefits for the time remaining of the ninety (90) day period.

D. Breach by CITY: In the event CITY breaches this Agreement in any material respect, such breach shall be considered as a termination and MANAGER shall be entitled to Severance Pay as set forth in this Agreement.

E. Breach by MANAGER: In the event MANAGER breaches this Agreement in any material respect, MANAGER shall not be entitled to Severance Pay and such breach shall be considered as a termination and shall be considered with cause pursuant to Section 3.B. above.

F. Expiration of Agreement: In the event that this Agreement expires because either party timely notified the other party, pursuant to Section 2.A of this Agreement, that the Agreement would not automatically renew, MANAGER shall not be entitled to Severance Pay.

4. Salary and Retirement.

CITY agrees to compensate MANAGER for services rendered, including services as AGENCY Executive Director, and related duties at the following annual pay rate effective with the execution of this Agreement: One Hundred Eighty-Five Thousand Dollars (\$185,000.00).

5. Management Benefit Package as of June 6, 2011.

Except as otherwise provided herein, MANAGER shall be granted the same package of benefits as is being provided to CITY's Executive Management employees on the Commencement Date of this Agreement. Any future change to the package of benefits provided to CITY's Executive Management employees shall not automatically change the level of benefits for MANAGER. All such benefits, and the benefits described hereunder shall be deemed "fringe benefits" herein. This includes the CITY's continued participation and contributions of CITY and MANAGER's obligations to the Public Employees Retirement System (PERS), group health, dental and related insurance programs (family coverage) in accordance with the PERS contract with CITY.

6. Automobile Allowance.

CITY agrees to provide MANAGER with an automobile allowance in the amount of

Three Hundred Fifty Dollars (\$350.00) per month for business. Such allowance shall be paid together with customary monthly payroll practices.

7. Membership and Subscriptions.

A. CITY, via the City Council's prior approval, agrees to budget and pay professional dues and subscriptions on behalf of MANAGER which are reasonably necessary for MANAGER's continued participation in national, regional, state or local associations and organizations necessary and desirable for MANAGER's continued professional participation, growth, and advancement or for the good of CITY and AGENCY including the International City Management Association and League of California Cities. Furthermore, CITY shall budget and pay for the professional dues and subscriptions to such additional organizations as approved by the CITY COUNCIL.

B. CITY agrees to budget and pay the travel and subsistence expenses of MANAGER for official travel, meetings, and occasions reasonably adequate to continue the professional development of MANAGER and reasonably pursued necessary official and other functions for CITY and/or AGENCY, including, but not limited to, the annual conference of the International City Management Association, the League of California Cities, and other such national, regional, state and local government groups and committees of which MANAGER serves as a member, as approved by CITY COUNCIL.

8. Sick Leave, Holidays, Vacation, Leave Without Pay, Bereavement Leave and Administrative Leave.

MANAGER shall be entitled to accrue, and have credited to his personal account, vacation, administrative leave and sick leave at the same rate as Executive Management employees of the CITY are being provided on the Commencement Date of this Agreement. MANAGER shall also be entitled to holidays, Leave Without Pay and Bereavement Leave on the same basis as Executive Management employees of CITY are receiving on the Commencement Date of this Agreement. Any future change to the holiday or leave benefits provided to CITY's Executive Management employees shall not automatically change the level of holiday or leave benefits for MANAGER.

9. Outside Activities.

MANAGER shall not spend more than five (5) hours per month in teaching, counseling or other non-Upland connected business without the prior approval of the CITY COUNCIL.

10. Performance Evaluation.

A. CITY COUNCIL anticipates that it shall review and evaluate the performance of MANAGER at least once annually. This annual review and evaluation shall be in accordance with specific criteria developed jointly by CITY COUNCIL and MANAGER. Such criteria may be added to or deleted as CITY COUNCIL may from time to time determine in consultation with MANAGER. Further, CITY COUNCIL shall provide MANAGER with a written performance review and provide an adequate opportunity for MANAGER to discuss his review with CITY COUNCIL in closed session. The failure of CITY COUNCIL to conduct an

annual review shall not affect the parties' rights to terminate this Agreement or any other rights under this Agreement.

Annually, CITY COUNCIL and MANAGER shall define such goals and performance objectives which they determine necessary for proper operation of the City of Upland. CITY COUNCIL and MANAGER shall further establish a relative priority among those various goals and objectives, said goals to be reduced in writing. These objectives shall generally be attainable within the time limitations as specified and the annual operation and capital budgets and appropriations provided. The failure of CITY COUNCIL to define such goals and performance objectives, and/or to reduce them to writing shall not affect the parties' rights to terminate this Agreement.

Said annual review shall constitute the basis for CITY COUNCIL to consider salary increases, if any are requested by MANAGER during the term hereof.

B. In giving effect to the provisions of this Section, CITY COUNCIL and MANAGER mutually agree to abide by all provisions of applicable law and policy.

11. Indemnification.

CITY shall defend, hold harmless and indemnify MANAGER against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of MANAGER's duties in accordance with the provisions of California Government Code Section 825. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom. This covenant shall survive the termination of this Agreement. This does not obligate CITY to pay punitive or exemplary damages which may be awarded but CITY may, in its sole discretion, elect to do so to the extent authorized by law.

12. Bond.

CITY shall bear the full cost of any fidelity or other bonds required of MANAGER under any law or ordinance.

13. Expenses.

As regards CITY business, MANAGER shall be reimbursed, or CITY may pay directly, for business, travel and related expenses incurred by MANAGER in accordance with CITY COUNCIL approved CITY expense policies.

14. Other Terms and Conditions of Employment.

A. CITY COUNCIL, in consultation with MANAGER, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of MANAGER, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Upland Municipal Code, any ordinance or resolution of the CITY, or other applicable law.

B. Working conditions, rules and regulations applicable to Management employees of CITY, as such rules now exist or hereinafter may be amended, shall also apply to MANAGER, except where such working conditions are contained within this Agreement or are inconsistent with the terms contained herein.

15. No Reduction of Benefits.

CITY shall not at any time during the term of this Agreement reduce the base salary, compensation, or other financial benefits of MANAGER except on the same basis as may be applicable generally to all Management employees of CITY.

16. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as set by United States Postal Service, postage prepaid and addressed as follows:

To CITY:

City Clerk
City of Upland
City Hall
460 N. Euclid Avenue
Upland, California 91786

To MANAGER:

Stephen Dunn
c/o City Hall
460 N. Euclid Avenue
Upland, California 91786

Notices shall be deemed given upon the date of deposit in the course of transmission with the United States Postal Service or upon personal delivery.

17. General Provisions.

A. The text herein shall constitute the entire agreement between the parties and supersede all other writings, negotiation or oral promises.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of MANAGER.

C. This Agreement shall become effective upon execution.

D. If any provision or any portion thereof contained in this Agreement is held unconstitutional, invalid, void or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.

E. MANAGER agrees and acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representation or promises other than those contained in this Agreement. MANAGER agrees that this Agreement should be

interpreted as if mutually prepared and without the same being construed for or against any party.

18. Attorneys' Fees.

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

19. Arbitration.

CITY COUNCIL and MANAGER mutually consent to the resolution by arbitration of all claims or controversies, whether or not arising out of MANAGER's employment (or his termination), that MANAGER may have against CITY, or against its CITY COUNCIL members, Mayor, administrators, employees or agents, or that the CITY may have against MANAGER.

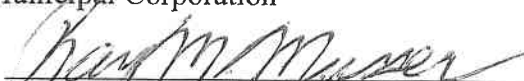
The claims covered by this provision include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims, claims for discrimination or harassment (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, medical condition, handicap or disability), claims for benefits (except where MANAGER's benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); and claims for violation of any federal, state or other governmental law, statute, regulation, or ordinance, except for claims MANAGER may have for Workers' Compensation or unemployment compensation benefits.

CITY COUNCIL and MANAGER agree that any arbitration shall be in accordance with the then current model employment arbitration procedures of the American Arbitration Association ("AAA") before an arbitrator who is licensed to practice law in California. The arbitration shall take place in San Bernardino County, California, or other agreed upon location, within ninety (90) days of the date of MANAGER's separation, and shall be governed by the California Arbitration Act, Sections 1280 through 1294.2 of the *California Code of Civil Procedure*.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and duly executed on its behalf by its CITY COUNCIL, and duly attested by its City Clerk, and MANAGER has signed and executed this Agreement.

THE CITY OF UPLAND,
A Municipal Corporation


By:


Ray Musser, Mayor

Date:

6/13/11

By:


Brendan Brandt, Mayor Pro Tem

Date:

6/13/11

By: Gino L. Filippi Date: 6.13.11
Gino L. Filippi, Councilmember

By: Kenneth W. Willis Date: 6-13-11
Kenneth W. Willis, Councilmember

ATTEST: By: Stephanie Mendenhall Date: 6/13/2011
Stephanie Mendenhall, City Clerk

STEPHEN DUNN

By: Stephen Dunn Date: 6-13-2011
Stephen Dunn

Approved as to form:

William P. Curley III
William P. Curley III, City Attorney